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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-588**

13 **JENALYN DE NIEVA**
A.K.A. JENALYN UBANDO DE NIEVA
14 **A.K.A. JENALYN UBANDO DE NIEVA-**
PEPITO, A.K.A. JENNA PEPITO
15 **432 Canyon Creek Drive**
American Canyon, CA 94503

A C C U S A T I O N

16 **Registered Nurse License No. 679421**

17 **Respondent.**

18
19 **Complainant alleges:**

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about May 17, 2006, the Board of Registered Nursing issued Registered Nurse
25 License Number 679421 to Jenalyn De Nieva, also known as Jenalyn Ubando De Nieva, also
26 known as Jenalyn Ubando De Nieva-Pepito, also known as Jenna Pepito (Respondent). The
27 Registered Nurse License was in full force and effect at all times relevant to the charges brought
28 here and will expire on June 30, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY/REGULATORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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8. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINARY ACTION

(Unprofessional Conduct)
(Bus. & Prof. Code §2761(a))

10. Respondent has subjected her Registered Nurse License to disciplinary action for unprofessional conduct under Code section 2761(a) on the grounds of general unprofessional conduct. Specifically, on or about March 2007 through on or about December 2008, while employed as a registered nurse at Napa State Hospital (NSH) in Napa, California, Respondent engaged in the following conduct:

a. Respondent crossed unprofessional boundaries with NSH male patient / victim A¹ (patient/victim A), by having a sexual and inappropriate /improper relationship with him. Respondent made a sexually explicit DVD video of her masturbating with her finger, dildo or

¹ The patient/victim will be referred to by letter only in order to preserve confidentiality.

1 vibrator, while talking on a cellular phone. Respondent gave this sexual explicit DVD video to
2 patient/victim A. Respondent made another sexually explicit DVD video, which showed
3 Respondent performing fellatio on patient/victim A. Later, Respondent gave this video to
4 patient/victim A. The sexual conduct between Respondent and patient/victim A included sexual
5 intercourse and oral sex. The sexual conduct occurred in shower stalls in the Unit T-13 restroom,
6 and behind the NSH Chapel. During these sexual encounters, Respondent had another NSH
7 patient "look out for them."

8 b. Patient/victim A bought Respondent a pair of diamond earrings for Christmas 2008,
9 and mailed them to her home address. Respondent provided patient/victim A her home address.
10 Patient/victim A also bought Respondent a pendant called "The Key To my Heart Pendant."
11 Respondent bought a cellular phone for patient/victim A, and a telephone card that patient/victim
12 A could re-charge by using Respondent's credit card's number. Respondent gave patient/victim A
13 her credit card number for that purpose. Respondent also gave her personal cellular telephone
14 number to patient/victim A. Respondent engaged in numerous telephone conversations with
15 patient/victim A by using the cellular phone she purchased for him, and the NSH unit pay phone.
16 Respondent wrote numerous letters to patient/victim A and received letters from him.

17 c. In December 2008, Respondent "broke up" with patient/victim A. After Respondent
18 "broke up" with him, patient/victim A (whose diagnosis is Bipolar Mood Disorder) became
19 depressed and attempted to kill himself by cutting his arms with a piece of tin from a Christmas
20 cookie container. For a couple of weeks after he cut his arms, patient/victim A stopped taking all
21 his anti-psychotic medications. From December 2008 to May 14, 2009, Respondent continued to
22 call patient/victim A on the NSH Unit T-13 pay phone. Respondent told patient/victim A that he
23 was "locked up and could not do anything about it." Patient/victim A reported that he felt abused
24 by Respondent and that he was upset that Respondent was "cheating on him," and that he could
25 not do anything about it. On or about April 2009, patient/victim A reported feeling "angry" and
26 "homicidal."

27 ///

1 d. The District Attorney's Office charged Respondent was charged with violating
2 Penal Code section 289.6; subdivisions (a)(1) and (d)(1) and/or (3) (unlawful sexual activity by
3 health facility employee with confined consenting adult), a felony, and Penal Code section 368(c)
4 (caretaker causing or permitting injury to an elder or dependent adult), a misdemeanor.
5 Respondent was later convicted of violating Penal Code section 368(c) (see below).

6 SECOND CAUSE FOR DISCIPLINARY ACTION

7 (Conviction)
8 (Bus. & Prof. Code §2761(f))

9 11. Complainant realleges the allegations contained in paragraph 10 above, and
10 incorporates them herein by reference as if fully set forth.

11 12. Respondent has subjected her Registered Nurse License to disciplinary action
12 under Code sections 490 and 2761(a) and California Code of Regulations, title 16, section 1444 in
13 that she was convicted of a crime substantially related to the qualifications, functions, or duties of
14 a registered nurse. Specifically, on or about October 16, 2009, in the Superior Court of
15 California, Napa County, Case Number CR147254, entitled *People of the State of California vs.*
16 *Jenilyn Ubando DeNieva-Pepito*, Respondent was convicted by the court on her plea of no
17 contest of violating Penal Code section 368(c) (caretaker causing or permitting injury to an elder
18 or dependent adult), a misdemeanor. Respondent's plea agreement included a "Harvey Waiver,"
19 which allowed the sentencing court to consider the dismissed count in the Information of
20 violating Penal Code section 289.6. subdivisions (a)(1) and (d)(1) and/or (3)(a)(1) (unlawful
21 sexual activity by health facility employee with confined consenting adult). Respondent was
22 placed on Formal Probation for three years on terms and conditions that included, but were not
23 limited to: serving forty-five days on the Court Work Program in a manner to be determined by
24 Post Court Services; submitting her person, residence, vehicle and property to search and seizure
25 by a probation officer, or any law enforcement officer, at any time of the day or night, with or
26 without a warrant, and with or without probable cause; paying restitution to the victim(s) and the
27 Victim Compensation and Government Claims Board, in a manner to be determined by the Court
28 and California Service Bureau, and in an amount to be determined by Probation and the Court;

1 and enrolling in, paying for, and successfully completing a counseling or education program if
2 required by the probation officer.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number RN 679421, issued to
7 Jenalyn De Nieva, also known as Jenalyn Ubando De Nieva, also known as Jenalyn Ubando
8 De Nieva Pepito, also known as Jenna Pepito (Respondent);

9 2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of
10 the investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3; and

12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: 5/12/10


LOUISE R. BAILEY, M.ED., RN

Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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